

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2013-CP-01766-COA

**UNDRE KIMMONS A/K/A ANDRE MARKETIH
KIMMONS A/K/A UNDREY A/K/A UNDRE
A/K/A ANDRE KIMMONS A/K/A ANDRE
MARKEITH KIMMONS**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 10/01/2013
TRIAL JUDGE: HON. ROBERT P. CHAMBERLIN
COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: UNDRE KIMMONS (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE
NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION: DENIED MOTION FOR POST-
CONVICTION RELIEF
DISPOSITION: AFFIRMED - 07/15/2014
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE LEE, C.J., BARNES AND FAIR, JJ.

LEE, C.J., FOR THE COURT:

¶1. Undre Kimmons is currently an inmate in the custody of the Mississippi Department of Corrections (MDOC), serving a sentence for cocaine possession under Mississippi Code Annotated section 41-29-139 (Rev. 2013). Kimmons, who was represented by retained counsel, pleaded guilty, and the trial court sentenced him to serve sixteen years as a habitual offender under Mississippi Code Annotated section 99-19-81 (Rev. 2007). Kimmons filed a motion for post-conviction relief (PCR), which was denied by the DeSoto County Circuit

Court.

¶2. Kimmons now appeals, asserting that under the requirements of *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011), he was denied due process of law, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, when he was denied the right to confront the witness who certified his records of prior conviction. Finding that *Bullcoming* is neither intervening nor applicable to this case, we affirm.

DISCUSSION

¶3. In his only issue on appeal, Kimmons contends that he was denied due process of law when he was unable to confront the witness who certified his prior-conviction records, in violation of the Confrontation Clause of the Sixth Amendment of the United States Constitution. The State used certified copies of Kimmons's prior convictions to prove Kimmons was a habitual offender under section 99-19-81.

¶4. Kimmons relies on the United States Supreme Court's decision in *Bullcoming*, which he asserts is an intervening decision that is identical to his case. Kimmons was indicted on October 6, 2011, and he entered his guilty plea on September 24, 2012. *Bullcoming* was decided on June 23, 2011, months before Kimmons was indicted, and well over a year before he entered his plea. *Bullcoming* is not intervening, and this argument is, therefore, barred. *See Lockett v. State*, 656 So. 2d 76, 80-81 (Miss. 1995).

¶5. In *Bullcoming*, the United States Supreme Court, relying on *Crawford v. Washington*, 541 U.S. 36 (2004), held that the defendant had the right to confront the analyst who certified the blood-alcohol-analysis report, as this report was testimonial under the Confrontation Clause. *Bullcoming*, 131 S. Ct. at 2713. Unlike *Bullcoming*, this case does not involve

testimonial records, as certified copies of prior convictions are admissible absent confrontation under *Frazier v. State*, 907 So. 2d 985, 998 (¶43) (Miss. Ct. App. 2005); *see also Rainey v. State*, 132 So. 3d 1085, 1087 (¶7) (Miss. Ct. App. 2014). This issue is without merit.

¶6. THE JUDGMENT OF THE DESOTO COUNTY CIRCUIT COURT DENYING THE MOTION FOR POST-CONVICTION RELIEF IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO DESOTO COUNTY.

IRVING AND GRIFFIS, P.JJ., BARNES, ISHEE, ROBERTS, CARLTON, MAXWELL, FAIR AND JAMES, JJ., CONCUR.